

January 17, 2018

VIA ECF AND ELECTRONIC MAIL

Honorable Katherine Polk Failla
United States District Judge
United States District Court, Southern District of New York
40 Foley Square
New York, New York 10007

Re: *Osen LLC v. United States Central Command*, 17 Civ. 4457 (KPF).

Dear Judge Failla:

The Parties write jointly to provide information as directed by the Court's November 9, 2017 order. *See* ECF No. 22. The Parties met and conferred on January 10, 2018 and identified the remaining issues in dispute, as required by that order.

First, the Parties have agreed that Defendant United States Central Command ("CENTCOM") has produced records in accordance with the schedule set out in the Court's November 9, 2017 order. Second, the Parties have agreed to a production schedule for all but one category of the remaining records that CENTCOM has identified as responsive to Plaintiffs' requests—the scheduled records relate to three attacks and casualty reports relating to a number of Plaintiff's clients.

The Parties propose the following production schedule:

- CENTCOM will release non-exempt, responsive records relating to two of the three attacks on or before January 31, 2018.
- CENTCOM will release non-exempt, responsive records relating to the third attack on or before February 28, 2018, along with approximately 400 pages of non-exempt, responsive casualty reports.
- CENTCOM will release the remaining non-exempt, responsive casualty reports by April 6, 2018.

Third, the Parties dispute whether CENTCOM is obligated to promptly release certain documents in its possession that it identified as responsive to Plaintiff's FOIA requests but that were created by a non-party—the Department of the Army (the "Army"). CENTCOM referred those documents to the Army for processing, but, despite contacting the Army about these referred documents on numerous occasions, has not received an anticipated date for the completion of that processing. CENTCOM contends it cannot control the release of these documents because it does not have control over the Army FOIA office or the timing of its review. Plaintiff contends, however, that CENTCOM remains obligated to release them promptly, and that without an order to do so, Plaintiff is left without a remedy. CENTCOM will continue to work with the Army to

Joint Letter to Judge Failla

Page 2 of 3

attempt to have the referred records released as promptly as possible. To the extent CENTCOM is not successful, the Parties will address this issue in summary judgment briefing.

Fourth, the Parties still dispute whether certain redactions made by CENTCOM are permissible under the Freedom of Information Act. Prior to the Parties' meet and confer, Plaintiff identified to CENTCOM categories of information that it contends CENTCOM inappropriately redacted and provided CENTCOM with a spreadsheet identifying each contested redaction contained in CENTCOM's first three productions,¹ along with notes explaining the basis for Plaintiff's challenge to the redactions where necessary. While CENTCOM is still reviewing the contested redactions, and may remove certain specific redactions, it has informed Plaintiff that as a general matter, it will not remove redactions as to at least some of the disputed categories, including images of damage to military vehicles from Explosively Formed Penetrators and other weapons.

The Parties plan to submit a stipulation, or to otherwise jointly memorialize their agreement on the issues to be resolved via summary judgment, prior to the commencement of motion practice.

Because the Parties have reached an impasse, they anticipate filing motions for summary judgment as to the prompt release of documents referred to the Army (if necessary) and certain of the withholdings. The Parties propose the following briefing schedule:

- CENTCOM will file its motion for summary judgment by April 13, 2018.
- Plaintiff will file its cross-motion for summary judgment and opposition to CENTCOM's motion by May 11, 2018.
- CENTCOM will file its reply in support of its motion and opposition to Plaintiff's cross-motion by May 25, 2018.
- Plaintiff will file its reply in support of its cross-motion by June 8, 2018.

¹ The Parties have agreed that Plaintiff will identify contested redactions from documents produced by CENTCOM on December 21, 2017 on or before January 26, 2018, and will identify any contested redactions from any subsequent document productions as soon as is practicable. The Parties do not anticipate that any additional challenges to withholdings in the December 21, 2017 production or any future productions will create substantial new issues to be addressed in summary judgment briefing. To the extent CENTCOM has withheld information in whole or in part from any document, and those withholdings have not been identified by Plaintiff as subject to challenge, the Parties agree that such withholdings are not in dispute, and need not be addressed in the Parties' summary judgment briefing.

Joint Letter to Judge Failla
Page 3 of 3

The Parties thank the Court for its consideration.

Respectfully submitted,

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